pleader filed by the garnishee can certainly be no more binding on the unserved debtor than a judgment in the garnishment suit. The principal case, therefore, seems clearly right. The result that the company must pay twice is harsh. But the situation is the same in any case where a debtor successively sued on one claim by two claimants in different jurisdictions is unable to serve both in any one jurisdiction. The better course for the debtor in such a case and for the defendant in the principal case would seem to be, not to interplead but to defend each action as it is brought.

LAW AND FACT — PROVINCES OF COURT AND JURY — COMPETENCY OF WITNESSES DEPENDING ON THE MAIN ISSUE. — In a prosecution for perjury it was alleged that the defendant previously had brought a suit for divorce in Texas; that he had in that suit sworn, in order to give the court jurisdiction, that he had been resident in Texas for twelve months; and that he had not, in fact, been so resident. The divorce was granted in the prior suit. The wife was offered by the state as witness for the prosecution. The court, after viewing the former divorce decree, permitted the wife to testify. *Held*, that there was no error. *Laird* v. *State*, 184 S. W. 810 (Texas).

The general rule that preliminary questions of fact are for the judge is no longer questioned. But the authorities are in conflict when the preliminary question of fact is also the main issue. Thus some courts hold that such circumstance should not prevent the court from passing on the question. *State* v. *Lee*, 127 La. 1077, 54 So. 356; *Hichins* v. *Eardley*, L. R. 2 P. & D. 248; *Doe* v. *Davies*, 10 Q. B. 314. Others, however, allow the question of admissibility to go to the jury, with instructions altogether to disregard the evidence if it is proved inadmissible. *Respublica* v. *Hevice*, 3 Wheeler Cr. Cas. 505 (Pa.); *Stowe* v. *Querner*, L. R. 5 Ex. 155. There seems to be no reason for departing from the general rule. The decision of the ultimate issue is, after all, still with the jury; and any undue influence, consequent upon the expression of the court's opinion, can be averted by having the jury retire during the determination of the question. The principal case, however, presents a novel problem. In objecting to the testimony of the witness, on the ground that she is his wife, the defendant is inconsistent both with his position in the former divorce suit and with his position as to the main issue in the present trial. As regards the first inconsistency, the law appears to be that a collateral attack on a judgment for want of jurisdiction of a party thereto can only be made by one not a party to the judgment. *Heffron* v. *Cunningham*, 76 Texas 312, 13 S. W. 259; *cf.* *Valentine* v. *McGrath*, 52 Miss. 112. But it would seem as if the defendant's attitude in this trial must also bar his objections. For by proving the preliminary fact, that she is still his wife, he is confessing the main issue, that he committed perjury and the divorce decree was void. The state is saved from an equally anomalous position by the fact that the burden of proof in a preliminary question of fact is upon the objecting party. For all relevant evidence is *primâ facie* admissible. See J. B. Thayer, "Presumptions and the Law of Evidence," 3 HARV. L. REV. 141, 144. Thus the state is simply objecting to the defendant's position. It is submitted that the defendant should be prevented from assuming such inconsistent attitudes in the same trial, by something akin to estoppel.

LIBEL AND SLANDER — DAMAGES — LIABILITY FOR UNAUTHORIZED REPETITION. — Defendant slandered the plaintiff by words actionable *per se*. The trial judge refused to instruct the jury that in assessing damages unauthorized repetitions by third parties were not to be considered. *Held*, that this was not error. *Southwestern Telegraph and Telephone Co.* v. *Long*, 183 S. W. 421 (Texas).

It is a well-established rule that the publisher of slander is not liable for its unauthorized repetition. *Dixon* v. *Smith*, 5 H. & N. 450; *Cates* v. *Kellogg*, 9 Ind. 506; *Shurtleff* v. *Baker*, 130 Mass. 293. See *Schoepflin* v. *Coffey*, 162 N. Y.